



Be Smart Buy Smart

What Smart Shoppers Know About Prizes and Gifts

Prizes

Business and Professions Code section 17537 (a) and (b), and Civil Code section 1584.5

It is unlawful for a salesperson or an advertiser to tell you that you have won a prize, and that in order to receive it, you must pay money, buy or rent a product or service, or make a donation.

If a business sends you a product or service that you did not order or request, with the intent of selling it or another product or service to you, you don't have to pay for it. You may consider the product or service to be an unconditional gift. It's probably a good idea to send a letter to the business informing it that "under California Civil Code section 1584.5, an unsolicited item is treated as a gift" and that you are not required to pay for it. (This rule does not apply where you have agreed with a business in advance to receive merchandise on a periodic basis.)

If the business continues to bill you even after you send this letter, you can sue to stop the continued billing. You may obtain an injunction and recover court costs and attorney's fees (unless you sue in small claims court). The district attorney in your county can also sue the business and recover up to \$2,500 for each violation.

Gifts

Business and Professions Code section 17537 (a) and (c)

A business cannot tell you that you have been specially selected to receive a gift, but that in order to receive it, you must pay money or buy a product or service. For example, if a business makes you such an offer, you must

- actually have been selected to receive the gift

AND

- have purchased something from the business within the last six months,

OR

- have a credit card or installment account with the business.

Sales Presentations or Seminars

Business and Professions Code sections 17533.8(a), 17537.1 and 17537.2

A salesperson who offers you a prize or gift and who intends to make a sales presentation must tell you that this is his or her intention. (This is also true for written advertisements.)

Sometimes, a salesperson or an advertisement may offer you a prize or gift if you will request that a salesperson come to your home to make a presentation, contact a salesperson, or visit a location. In these situations, the person or the advertisement must clearly disclose the following in writing:

- The purpose of the requested visit, sales presentation, or contact with a salesperson. This must include a general description of the property, product, or service that will be offered for sale.

- An estimate of the length of time of the visit and presentation.

- Any deadlines or conditions that you must meet to qualify for the gift or prize.

- The statistical odds of your receiving each item offered if you are not assured of receiving any particular item.

- Whether you can receive a rain check or a substitute item.

Sales Presentations or Seminars (cont.)

-The name and street address of the owner of the property or the provider of services that are being offered, and a general description of the owner's or provider's business.

Other restrictions also apply if you have to pay money to receive a gift. For example, California law limits the amount of shipping and handling charges that may be imposed. Generally, you cannot be required to pay any money for any purpose in order to "utilize" the prize or gift.

Once you have responded to the offer in the manner specified and have met all of the requirements and qualifications, the business must give you the offered item. There is an exception if the item is not reasonably available and if the written offers reserves the right to provide a rain check or a substitute item.

Before You Sign a Contract

Civil Code sections 1689.5 and 1689.21

You may be offered a contract after you listen to the sales presentation or seminar. Do not sign the contract or give the sales person a deposit or your credit card number right away. Tell the salesperson that you will need a few days to consider your decision. Be wary of offers that claim to be for a "limited time" only, and efforts to make you buy "on the spot."

During that time, get additional information. Check the business' reputation with the Better Business Bureau. (However, if the Better Business Bureau has not received any complaints about the business, this doesn't mean there haven't been any.) You may also wish to check with the California Attorney General and your local district attorney.

Although state law may require a business to provide a period to cancel the contract, you should not count on being able to cancel and get your money back unless your right to do so is clearly spelled out in the contract, and unless you can locate the company at a later time. Even then, getting your money back may be difficult.

Where To Go For Help

Your local district attorney's office (look in the white pages of your phone book under county government)

Write a letter of complaint to the California Department of Justice, Office of the Attorney General, Public Inquiry Unit, Post Office Box 944255, Sacramento, CA 94244-2550, 1-800-952-5255, www.caag.state.ca.us.

For Information on Other Consumer Topics

Visit the Department's website at www.dca.ca.gov or call 1-800-952-5210.

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